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ATTORNEYS FOR DEFENDANT
ARISTA NETWORKS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE

CISCO SYSTEMS, INC.,

Plaintiff,

v.

ARISTA NETWORKS, INC.,

Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**PARTIES' AMENDED UNDISPUTED
JURY INSTRUCTION NO. 68**

Dept.: Courtroom 3 – 5th Floor
Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 Plaintiff Cisco Systems, Inc. and Defendant Arista Networks, Inc. hereby provide the
 2 following amended undisputed Preliminary Jury Instruction No. 68:

3 **STIPULATED: Preliminary Instruction No. 68 re Patent—What A Patent Is And How One**
 4 **Is Obtained**¹

5 This case also involves a dispute relating to a United States patent. Before summarizing
 6 the positions of the parties and the legal issues involved in the dispute, let me take a moment to
 7 explain what a patent is and how one is obtained.

8 Patents are granted by the United States Patent and Trademark Office (sometimes called
 9 “the PTO”). The process of obtaining a patent is called patent prosecution. A valid United States
 10 patent gives the patent owner the right to prevent others from making, using, offering to sell, or
 11 selling the patented invention within the United States, or from importing it into the United
 12 States, during the term of the patent without the patent holder’s permission. A violation of the
 13 patent owner’s rights is called infringement. The patent owner may try to enforce a patent against
 14 persons believed to be infringers by a lawsuit filed in federal court.

15 To obtain a patent one must file an application with the PTO. The PTO is an agency of
 16 the federal government and employs trained examiners who review applications for patents. The
 17 application includes what is called a “specification,” which must contain a written description of
 18 the claimed invention telling what the invention is, how it works, how to make it and how to use
 19 it so others skilled in the field will know how to make or use it. The specification concludes with
 20 one or more numbered sentences. These are the patent “claims.” When the patent is eventually
 21 granted by the PTO, the claims define the boundaries of its protection and give notice to the
 22 public of those boundaries.

23 After the applicant files the application, a PTO patent examiner reviews the patent
 24 application to determine whether the claims are patentable and whether the specification
 25 adequately describes the invention claimed. In examining a patent application, the patent
 26 examiner reviews records available to the PTO for what is referred to as “prior art.” The

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 28 ¹ N.D. Cal. Model Patent Jury Instruction A.1 (July 16, 2015); Federal Circuit Bar Association
 Model Patent Jury Instructions A.4 (July 2016).

1 examiner also will review prior art if it is submitted to the PTO by the applicant. In general, prior
2 art includes things that existed before the claimed invention, that were publicly known, or used in
3 a publicly accessible way in this country, or that were patented or described in a publication in
4 any country. The examiner considers, among other things, whether each claim defines an
5 invention that is new, useful, and not obvious in view of the prior art. A patent lists the prior art
6 that the examiner considered; this list is called the “cited references.”

7 After the prior art search and examination of the application, the patent examiner then
8 informs the applicant in writing what the examiner has found and whether any claim is
9 patentable, and thus will be “allowed.” This writing from the patent examiner is called an “office
10 action.” If the examiner rejects the claims, the applicant then responds and sometimes changes
11 the claims or submits new claims. This process, which takes place only between the examiner
12 and the patent applicant, may go back and forth for some time until the examiner is satisfied that
13 the application and claims meet the requirements for a patent. The papers generated during this
14 time of communicating back and forth between the patent examiner and the applicant make up
15 what is called the “prosecution history.” All of this material becomes available to the public no
16 later than the date when the patent issues.

17 The fact that the PTO grants a patent does not necessarily mean that any invention
18 claimed in the patent, in fact, deserves the protection of a patent. For example, the PTO may not
19 have had available to it all the information that will be presented to you.

20 In deciding the issues I just discussed, you will be asked to consider specific legal
21 standards. I will give you an overview of those standards now and will review them in more detail
22 before the case is submitted to you for your verdict. The one issue you will be asked to decide is
23 whether Arista has infringed the claims of the ’526 patent. Infringement is assessed on a claim-
24 by-claim basis. Therefore, there may be infringement as to one claim but not infringement as to
25 another. There are a few different ways that a patent may be infringed. In general, however,
26 Arista may infringe the ’526 patent by making, using, selling, or offering for sale in the United
27 States, or by importing into the United States, a product or by using a method meeting all the
28 requirements of a claim of the ’526 patent. Arista may also indirectly infringe the ’526 patent by

1 contributing to infringement by another entity, or by inducing another person or entity to infringe.
2 I will provide you with more detailed instructions on the requirements for each of these types of
3 infringement at the conclusion of the case.

4 DATED: November 17, 2016

Respectfully submitted,

5
6 /s/ John M. Neukom

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Dated: November 17, 2016

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Attorneys for Defendant Arista Networks, Inc.

ATTORNEY ATTESTATION

I hereby attest, pursuant to Local Rule 5-1(i)(3), that the concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of John M. Neukom within this e-filed document.

/s/ Brian L. Ferrall

BRIAN L. FERRALL